

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

USCOC of New Hampshire RSA #2, Inc.

v.

Civil No. 05-cv-266-JM

City of Franklin, New Hampshire

O R D E R

Counsel moves to permit fifteen unidentified "abutters and near neighbors" to plaintiff's proposed wireless facility to intervene in this case. Plaintiff objects.

Background

Plaintiff instituted suit against the City of Franklin due to its planning board's denial of plaintiff's cell tower application. Defendant based its decision in part upon (1) the alleged dangerous conditions of such construction in this area, (2) the damaging effect that this tower will impose on the aesthetic nature of the surrounding community and (3) the diminution of value which the tower will allegedly create to local residences. The purported intervenors allege that the plaintiff's proposed project represents a danger to their health and safety and that it will diminish their property values.

Discussion


Fed. R. Civ. P. 24(a)(2) requires that a party seeking to

intervene to show that "the applicant's interest is (not) adequately represented by existing parties." The burden is upon the applicant to demonstrate the inadequacy. Public Service Co. of New Hampshire v. Patch, 136 F.3d 197, 207 (1st Cir. 1998). There must be a tangible basis to support the claimed inadequacy and that showing is greater when intervenors seeks to defend a decision of a governmental entity. Id. The First Circuit requires that the intervenor rebut the presumption that the government will adequately represent the interests of its citizens. Id.

In this instance the interests advocated by the applicants match two of the purported bases of Franklin's decision. The allegations that the fifteen anonymous applicants care more about these bases than Franklin and that lack of financial resources will limit Franklin's vigor simply do not rebut the presumption.

The motion (document no. 8) is denied.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: October 6, 2005
cc: Steven E. Grill, Esq.
Paul T. Fitzgerald, Esq.
Geoffrey J. Ransom, Esq.